

THE HONORABLE LAUREN KING

Robert W. Mitchell (WSBA # 37444)  
ROBERT MITCHELL ATTORNEY AT LAW, PLLC  
1020 N. Washington St.  
Spokane, WA 99201  
Telephone: 509-327-2224  
Email: bobmitchellaw@gmail.com  
*Attorney for Plaintiff, Michael Evitt*

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

MICHAEL EVITT,

Plaintiff,

v.

EXPERIAN INFORMATION SOLUTIONS,  
INC., an Ohio Corporation, TRANS UNION  
LLC, a Delaware Limited Liability  
Company, EQUIFAX INFORMATION  
SERVICES, LLC, a Georgia Limited  
Liability Company,

Defendants.

NO. 3:23-cv-05294-LK

**PLAINTIFF'S FRCP 60 MOTION  
FOR RELIEF FROM ORDER  
COMPELLING ARBITRATION**

**NOTE ON MOTION DOCKET:**

**JUNE 7, 2024**

**WITHOUT ORAL ARGUMENT**

COMES NOW PLAINTIFF, by and through the undersigned counsel, pursuant to Fed.  
R. Civ. P. 60(b), and respectfully moves this Court to vacate the order compelling arbitration of  
Plaintiff's claims against Defendant, Experian. ECF No. 64.

**I. INTRODUCTION**

Experian's continued delay and refusal to file for arbitration justifies relief from this  
Court's order compelling this matter to arbitration. ECF No. 64.

## II. FACTS

2.1 In March of 2023, Plaintiff initiated this matter by serving Experian with an unfiled Summons and Complaint. ECF No. 1.

2.2 On March 1, 2024, Experian filed a motion to compel arbitration. ECF No. 42.

2.3 On March 8, 2024, Plaintiff opposed the motion to compel arbitration, alleging that Experian waived arbitration by acting inconsistent with the right to arbitrate, by engaging in unnecessary delay. ECF No. 48.

2.4 On April 8, 2024, this Court compelled this matter to arbitration. ECF No. 64.

2.5 Experian has since refused to file for arbitration. ECF No. 67.

## III. AUTHORITY

### A. **Standard on Motion for Relief from Order.**

The Federal Rules of Civil Procedure provide in pertinent part:

(b) On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: ... (6) any other reason that justifies relief.

*See* Fed. R. Civ. P. 60(b)(6).

On April 8, 2024, this Court compelled this matter to arbitration. ECF No. 64. Experian has since refused to file for arbitration. ECF No. 67. It has now been 13 months since this case was initiated. ECF No. 1. Experian's inaction in the face of this Court's order compelling arbitration justifies relief from the order compelling arbitration.

### B. **Experian Waived Arbitration.**

"Waiver, we have said, is the intentional relinquishment or abandonment of a known right." *Morgan v. Sundance, Inc.*, 142 S. Ct. 1708, 171 (2022), citing *United States v. Olano*,

507 U. S. 725, 733 (1993). “While ‘waiver’ generally denotes the voluntary relinquishment of a known right, it can also refer to the loss of a right as a result of a party’s failure to perform an act it is required to perform, regardless of the party’s intent to relinquish the right.” *St. Agnes Medical Center v. PacifiCare of California*, 31 Cal.4<sup>th</sup> 1187, 1195-1196 (2003).

On April 8, 2024, this Court compelled arbitration and ordered the parties to file a status report on May 8, 2024. ECF No. 64. Instead of filing for arbitration, Experian waited until 3:52 P.M., on May 8, 2024, to provide Plaintiff’s counsel with a draft status report. ECF No. 67. Experian attempts to place the onus to file for arbitration on Plaintiff. *Id.* Plaintiff never requested arbitration. ECF Nos. 42-48. Plaintiff opposes arbitration. *Id.* To date, Experian has not filed for arbitration, nor paid arbitration fees. ECF No. 67.

Experian’s intentional delay is contrary to the right to arbitration. Experian’s delay justifies relief from the order compelling arbitration. ECF No. 64.

#### IV. CONCLUSION

For the above reasons, this Court should vacate the order compelling this matter to arbitration where Experian has once again engaged in delay and inaction contrary to the right to arbitrate.

#### WORD COUNT CERTIFICATION

Pursuant to Local Civil Rule 7(e)(6), I hereby certify that this document contains 519 words.

#### MEET AND CONFER CERTIFICATION

On May 15, 2024, the parties met and conferred concerning this motion. Experian refused to file for arbitration, opposes this motion, and believes that sanctions are appropriate.

PLAINTIFF’S MOTION FOR RELIEF  
FROM ORDER COMPELLING  
ARBITRATION

1 Dated May 15, 2024.

2 S//Robert W. Mitchell  
3 ROBERT MITCHELL (WSBA No. 37444)  
4 ROBERT MITCHELL ATTORNEY AT LAW, PLLC  
5 1020 N. Washington, Spokane, WA 99201  
6 Telephone: 509-327-2224  
7 Email: bobmitchellaw@gmail.com  
8 *Attorney for Plaintiff, Michael Evitt*  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

26 PLAINTIFF'S MOTION FOR RELIEF  
FROM ORDER COMPELLING  
ARBITRATION

**CERTIFICATE OF SERVICE**

I hereby certify under penalty of perjury under the laws of the State of Washington that on the 15<sup>th</sup> day of May, 2024, I filed the foregoing in ECF, which will send notice to Defendants at the following:

Jeffrey M. Edelson  
MARKOWITZ HERBOLD PC  
1455 SW Broadway, Suite 1900  
Portland, OR 97201  
Email: JeffEdelson@MarkowitzHerbold.com

Mason A Moody, Esq.  
Quilling, Selander, Lownds, Winslett & Moser, P.C.  
10333 North Meridian Street, Suite 200  
Indianapolis, IN 46290  
Email: mmoody@qslwm.com

Nicholas Ranallo  
5058 57th Ave. S.  
Seattle, WA 98118  
Email: nick@ranallolawoffice.com

Stuart R. Settle, *Pro Hac Vice*  
Schuckit & Associates PC  
4545 Northwestern Drive  
Zionsville, IN 46077  
Email: ssettle@schuckitlaw.com

Angela M. Taylor, *Pro Have Vice*  
3161 Michelson Drive Suite 800  
Irvine, CA 92612  
Email: angelataylor@jonesday.com

Rachel D Groshong, Esq.  
Sara J. Wadsworth  
Stoel Rives LLP  
600 University Street Suite 3600  
Seattle, WA 98101  
Email: rachel.groshong@stoel.com, sara.wadsworth@stoel.com

1 Dated this 15<sup>th</sup> day of May, 2024, at Memphis, Tennessee.

2 S//Robert W. Mitchell

3 ROBERT MITCHELL (WSBA No. 37444)

4 ROBERT MITCHELL ATTORNEY AT LAW, PLLC

5 1020 N. Washington

6 Spokane, WA 99201

7 Telephone: 509-327-2224

8 Email: bobmitchellaw@gmail.com